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Attorneys for Defendants Mousa Namvar
Magdiel, LLC, DGADE of Delaware, LLC, Namco
8, LLC, Bunherst, LLC and Defendant and Third-
Party Plaintiff Wishlab 90, LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

In re:

NAMCO CAPITAL GROUP, INC., a
California corporation,

Debtor.

Distict Court Case No. CV-11-05320-
GAF (CWx)

BRADLEY D. SHARP, solely in his
capacity as Chapter 11 Trustee of
NAMCO CAPITAL GROUP, INC.,

Plaintiff,

Bankruptcy Court Case No. 2:08-bk-
32333-BR

CHAPTER 11

v.

Adv. Proc. No. 2:10-ap-02945

MOUSA NAMVAR, HOOSHANG
NAMVAR, HOMAYOUN NAMVAR,
RAMIN NAMVAR, HELEN SHADI,
HILDA BAYANFAR, LIDA
SHRAGA, NATALY NAMVAR,
DANIEL NAMVAR, BENJAMIN
NAMVAR, MALKA NAMVAR,
SHIRAH NAMVAR, TRIFISH, LLC,
TRIBUN, LLC, MAGDIEL, LLC,
TRISISTER, LLC, BELIEVERS, LLC,
NET, LLC, LIGHT SOURCE, LLC,
LA HOTEL VENTURE, LLC,
LANCAM PROPERTIES, LLC,
LACY 20, LLC, NAM 5, LTD.,
NAMCO 8 LLC, WISHLAB 90, LLC,
BUNHERST, LLC, DGADE OF

**WISHLAB 90 LLC'S NOTICE OF
MOTION AND MOTION FOR
LEAVE TO FILE THIRD-PARTY
COMPLAINT PURSUANT TO
F.R.C.P. 14; MEMORANDUM OF
POINTS & AUTHORITIES;
DECLARATIONS OF LORI L.
WERDERITCH AND FARAMARZ
RABAN IN SUPPORT THEREOF**

Assigned To: Hon. Gary Allen Feess

Date: November 19, 2012

Time: 9:30 a.m.

Dept./Place: Courtroom 740

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DELAWARE, LLC, TOYRAM, LLC,
NAMARI, LLC, WOODMAN
PARTNERS, LLC, TRITOWNE, LLC,
TRIGROVE, LLC and HARON
SHARATIAN,

Defendants.

WISHLAB 90, LLC, a Delaware
limited liability company,

Third-Party Plaintiff,

v.

CANYON SPRINGS SHOPPING
CENTER, LLC, a California limited
liability company,

Third-Party Defendant.

TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Defendant Wishlab 90, LLC (“Wishlab”) in this action hereby seeks, pursuant to Rule 14 of the Federal Rules of Civil Procedure, leave to serve a Summons and Third-Party Complaint, copies of the relevant sections of which are attached to this motion as **Exhibit A**, on Canyon Springs Shopping Center, LLC (“Canyon Springs”), Third-Party Defendant.

As demonstrated by this motion, based on tenets of equity, Canyon Springs is or may be liable to indemnify Wishlab concerning certain claims asserted against Wishlab by Plaintiff Bradley D. Sharp, Chapter 11 Trustee of Namco Capital Group, Inc. (“Plaintiff”), regarding the Red Feather Mall transfers alleged in Plaintiff’s First Amended Complaint herein.

This motion is made more than 14 days from the date on which Wishlab served its original answer in this case, so leave of court is required under the terms of Rule 14(a) of the Federal Rules of Civil Procedure.

Despite the need for leave of court, Wishlab has not unreasonably delayed the bringing of this motion. This motion was brought within the period permitted

1 by this Court's Scheduling And Case Management Order to allow the addition of
2 parties.

3 The parties are in the discovery phase of the case. The Discovery Cut-Off
4 date is not until July 26, 2013, the Motion Cut-Off date not until August 19, 2013,
5 and the trial has been set for more than a year out, on October 29, 2013.

6 Accordingly, as the parties hereto have only just commenced discovery and based
7 on these deadlines, no party will suffer prejudice by the addition of Canyon
8 Springs.

9 As the attached Declaration of Lori L. Werderitch shows, prior to filing this
10 motion, counsel for the moving party consulted with opposing counsel, pursuant to
11 L.R. 7-3, and opposing counsel has not yet indicated whether this motion will be
12 opposed by Plaintiff. Wishlab has additionally engaged in discussions with Canyon
13 Springs, but no resolution has been reached.

14 This motion is based on the pleadings and papers on file in this action, this
15 notice of motion and motion, the accompanying memorandum of points and
16 authorities, the Declarations of Lori L. Werderitch and Faramarz Raban, and
17 whatever evidence and argument is presented at any hearing on this motion.

18 DATED: September 27, 2012

GREENBERG GLUSKER FIELDS
CLAMAN & MACHTINGER LLP

19
20
21 By: */s/ Brian L. Davidoff*

BRIAN L. DAVIDOFF (SBN 102654)
LORI L. WERDERITCH (SBN 247345)
Attorneys for Defendants Mousa Namvar
Magdiel, LLC, DGADE of Delaware,
LLC, Namco 8, LLC, Bunherst, LLC and
Defendant and Third-Party Plaintiff
Wishlab 90, LLC

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Wishlab 90, LLC (“Wishlab”) seeks leave to file the accompanying Third-Party Complaint against Canyon Springs Shopping Center, LLC (“Canyon Springs”) for equitable and comparative indemnity and declaratory relief in that if Wishlab incurs any liability to Plaintiff Bradley D. Sharp, Chapter 11 Trustee of Namco Capital Group, Inc. (“Plaintiff”), regarding the Red Feather Mall transfers (the “Red Feather Mall Transfers”) alleged in Plaintiff’s First Amended Complaint (“FAC”) herein, Canyon Springs is equitably obligated to fully indemnify Wishlab for any sum that Wishlab may be compelled to pay as the result of any damages, judgment, or other awards recovered by Plaintiff against it. Pursuant to the “Scheduling And Case Management Order” entered in this case on June 25, 2012, September 28, 2012 was set as the last day to add parties to this action. Accordingly, Wishlab hereby respectfully requests the Court grant it leave to file its Third-Party Complaint against Canyon Springs pursuant to Rule 14 of the Federal Rule of Civil Procedure.

II. STATEMENT OF FACTS

Plaintiff’s case arises from the bankruptcy of Namco Capital Group, Inc. and seeks to avoid a series of transfers, including (most notably, for the purposes of this motion) certain transfers concerning the Red Feather Mall (the “Red Feather Mall Transfers”). *See* Plaintiff’s FAC, pp. 23-24.

A. The MPA and Plaintiff’s FAC.

On or about June 29, 2007, Canyon Springs, on the one hand as Seller, and Wishlab, on the other hand as Buyer, entered into that certain Membership Interests Purchase Agreement (“MPA”), by which Canyon Springs sold 100% of its membership interest in Namco 8, LLC (the “Company”). A true and correct copy of the relevant portion of the MPA is attached to accompanying Declaration of Faramarz Raban (“Raban Dec.”) as **Exhibit B**.

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1 In connection therewith, and pursuant to section 2.3 of the MPA, Canyon
2 Springs expressly represented and warranted to Wishlab, among other things, that
3 “Except for [a certain loan unrelated to this motion], there are no other ‘Contracts’
4 liabilities or obligations of the Company that have been entered into and which
5 remain in any force or effect . . .” See **Exhibit B** to the Raban Dec., at §2.3.

6 Wishlab’s purchase price for the Company’s membership interest was
7 \$6,200,000.00. Further, Wishlab performed all conditions precedent to and terms
8 of the MPA.

9 Thereafter, on or about January 11, 2011 Plaintiff filed its FAC against
10 Wishlab, among others, specifically alleging in part that, commencing February 4,
11 2002, Namco Capital Group, Inc. made net transfers to Namco 8, LLC totaling
12 \$10,467,843, and made further net transfers to Namco 8, LLC in connection with
13 the Red Feather Mall (the “Red Feather Mall Transfers”).

14 Plaintiff alleges that together with interest Namco 8, LLC and Wishlab owes
15 Plaintiff \$21,264,000.00. Yet, pursuant to section 2.3 of the MPA, Canyon Springs
16 represented to Wishlab that this liability did not exist and Wishlab relied, to its
17 detriment, on Canyon Spring’s representation. Based thereon, Canyon Springs is or
18 may be liable to equitably indemnify Wishlab concerning certain claims asserted
19 against Wishlab by Plaintiff.

20 **B. The Motion Is Timely.**

21 This motion is made more than 14 days from the date on which Wishlab
22 served its original answer in this case, so leave of court is required under the terms
23 of Rule 14(a) of the Federal Rules of Civil Procedure. Despite the need for leave of
24 court, Wishlab has not unreasonably delayed the bringing of this motion. This
25 motion was brought within the period permitted by this Court’s Scheduling And
26 Case Management Order to allow the addition of parties.

27 The parties are in the discovery phase of the case. The Discovery Cut-Off
28 date is not until July 26, 2013, the Motion Cut-Off date not until August 19, 2013,

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1 and the trial has been set for more than a year out, on October 29, 2013.
2 Accordingly, as the parties hereto have only just commenced discovery and based
3 on these deadlines, no party will suffer prejudice by the addition of Canyon
4 Springs.

5 **III. LEAVE TO FILE THIRD-PARTY COMPLAINT SHOULD BE** 6 **GRANTED**

7 “A defending party may, as third-party plaintiff, serve a summons and
8 complaint on a nonparty who is or may be liable to it for all or part of the claim
9 against it.” See F.R.C.P. 14(a). While impleader under this Rule is within the
10 Court’s discretion when filed more than 14 days after the moving party’s answer, *it*
11 *is to be construed liberally in favor of allowing impleader for the purpose of*
12 *reducing multiplicity of litigation.* See, e.g., *Lehman v. Revolution Portfolio, LLC*,
13 166 F.3d 389, 393 (1st Cir. 1999) (district court “should allow impleader on any
14 colorable claim of derivative liability that will not unduly delay or otherwise
15 prejudice the ongoing proceedings”); *FDIC v. Loube*, 134 F.R.D. 270, 272 (N.D.
16 Cal. 1991) (the rule is designed to reduce multiplicity of litigation, it is construed
17 liberally in favor of allowing impleader).

18 In fact, it is generally held that the Court should allow the impleader claim
19 absent some reason not to. See *Lehman, supra*, 166 F.3d at 393; *Trane U.S. Inc. v.*
20 *Meehan*, 250 F.R.D. 319, 322 (N.D. Ohio 2008); *Nova Prods., Inc. v. Kisma Video,*
21 *Inc.*, 220 F.R.D. 238, 240 (S.D.N.Y. 2004) (stating that leave to implead should be
22 “freely granted” unless it would cause undue prejudice or complication, or where
23 the claim is obviously without merit). Moreover, an abuse of discretion occurs
24 when the District Court denies impleader when the conditions for asserting an
25 impleader claim are “manifestly satisfied.” *Marseilles Hydro Power, LLC v.*
26 *Marseilles Land and Water Co.*, 299 F.3d 643, 650 (7th Cir. 2002).

27 In deciding whether impleader is appropriate, the District Court should
28 balance the benefits afforded by liberal third party practice against the merits of the

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1 third party complaint, any possible prejudice to the plaintiff and the third party
2 defendant, the complication of issues at trial, and any additional costs that might be
3 incurred by the parties. *Crude Crew v. McGinnis & Assocs., Inc.*, 572 F.Supp. 103,
4 109 (E.D. Wis. 1983); *Irwin v. Mascott*, 94 F.Supp.2d 1052, 1056 (N.D. Cal. 2000).
5 The addition of Canyon Springs as a third party defendant does not in any way
6 change the nature of what the Plaintiff must prove to establish its case. It does
7 however provide Wishlab a necessary source of relief if Plaintiff is successful on its
8 Complaint. As all of these factors weigh in favor of Wishlab's Third-Party
9 Complaint, leave to file the Third-Party Complaint should be granted.

10 **A. The Third-Party Complaint Is Proper Because Canyon Springs Is**
11 **Potentially Liable To Indemnify Wishlab If Wishlab Is Found**
12 **Liable to Plaintiff Respecting the Subject Transfers.**

13 In the interest of bringing all aspects of a single case or controversy before
14 the Court, F.R.C.P. 14(a) allows a defendant to implead a third party who is or may
15 be liable to the defendant if defendant is liable to the plaintiff. *See* Fed. R. Civ. P.
16 14(a). The mere contingency of the liability does not prevent the assertion of the
17 claim. *See Androlonis v. United States*, 26 F.3d 1224, 1233 (2nd Cir. 1994) (it is
18 sufficient if there is some possible scenario under which the third party defendant
19 may be liable for some or all of the defendant's liability to plaintiff); *Banks v. City*
20 *of Emeryville*, 109 F.R.D. 535, 540 (N.D. Cal. 1985).

21 Nor is it required that the third-party defendants be directly liable to plaintiff,
22 or that third-party complaint allege the same theories of liability as the original
23 complaint. *See Banks*, 109 F.R.D. at 540. "Because Rule 14 is designed to reduce
24 multiplicity of litigation and therefore is remedial in character, it should be
25 construed liberally." *Cal. Medical Ass'n v. Kizer*, 1988 WL 235547 at *2 (E.D.
26 Cal. May 17, 1988) (internal quotations omitted).

27 Put another way, the defining characteristic of a claim under Rule 14 is that
28 the "defendant is attempting to transfer to the third party defendant the liability

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asserted against him by the original plaintiff.” *Id.* at *4. Thus, as stated by the Ninth Circuit, “*if there is any possible scenario under which the third party defendants may be liable for all or part of the defendants’ liability to the plaintiff, the third party complaint should be allowed to stand.*” *Jensen Electric Company v. Moore, et al.*, 873 F.2d 1327, 1330 (9th Cir. 1989) (emphasis added).

As explained above, Canyon Springs expressly represented and warranted to Wishlab, among other things, that no other outstanding liabilities or obligations existed with respect to Wishlab’s purchase of membership interests of the Company, aside from a loan not at issue. *See Exhibit B* to the Raban Dec., at §2.3. However, as alleged in the FAC, such liabilities and obligations allegedly exist notwithstanding Canyon Spring’s representation with respect to the Red Feather Mall Transfers alleged in the FAC. Wishlab relied, to its detriment, on Canyon Spring’s representation. Based thereon, Canyon Springs is or may be liable to indemnify Wishlab concerning certain claims asserted against Wishlab by Plaintiff

Federal courts affirm that Wishlab’s third party claims for indemnity and contribution against Canyon Springs are recognized by California law.¹ *See id.* at 540-41 (citing *Am. Motorcycle Assn. v. Superior Court*, 20 Cal. 3d 578, 598-604 (1978)). Hence, to any extent Wishlab is found liable in this lawsuit to Plaintiff concerning the Red Feather Mall Transfers alleged in the the FAC, Wishlab may seek equitable indemnity and contribution to offset those damages against Canyon Springs. *See Hydro-Air Equip., Inc. v. Hyatt Corp.*, 852 F.2d 403, 406 (9th Cir. 1988) (“The principle of implied equitable indemnity is designed to prohibit one from profiting by his own wrong at the expense of one who is either free from fault or negligent to a lesser degree.”).

Federal courts further recognize that the asserted state law third-party claims by Wishlab against Canyon Springs are properly the subject of a Rule 14(a) impleader action. *See, e.g., Kizer, supra*, 1988 WL 235547 at *2 (“[A] third-party

¹ The MPA, at section 6.8, is governed by the law of the State of California.

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complaint is typically brought where there is a right of reimbursement, indemnity, contribution or the like against the putative third party.”).

Canyon Springs is therefore properly named as a third-party defendant impleaded under Rule 14(a) and leave to file the Third-Party Complaint should be granted.

B. Impleading Increases Judicial Efficiency and Avoids Two Separate Proceedings That Should Be Tried Together.

Rule 14 is designed to increase judicial efficiency and to effectuate more expeditious administration of justice. Its purpose is to avoid two actions which should be tried together and to facilitate trial of multiple claims which otherwise would be triable only in separate proceedings. *See U.S. v. Yellow Cab Co.*, 340 U.S. 543, 556 (1951); *Jensen Elec. Co. v. Moore*, 873 F.2d 1327, 1331 (9th. Cir. 1989). Here, Wishlab seeks to implead Canyon Springs for indemnity and declaratory relief. Impleading Canyon Springs increases judicial efficiency, effectuates more expeditious administration of justice and avoids two actions which should be tried together.

Wishlab could achieve the same result as an impleader under Rule 14(a) by filing a separate complaint against Canyon Springs. However, this process will not meet the objectives of Rule 14 indicated above but instead delay the administration of justice and reduce efficiency. Accordingly, to increase judicial efficiency and avoid the trying of two separate actions which should be tried together, Wishlab respectfully requests the Court to grant its motion for leave to file its Third-Party Complaint against Canyon Springs.

C. No Substantial Delay, Complication, or Prejudice Will Result.

Unreasonable delay in seeking to implead a third-party may be a valid basis to deny impleader where the plaintiff has been prejudiced by the delay. *See Blais Constr. Co., Inc. v. Hanover Square Associates-I*, 733 F.Supp. 149, 158 (N.D.N.Y. 1990); *Plywood Panels, Inc. v. M/V Thalia*, 141 F.R.D. 689, 692 (E.D. LA 1992).

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1 Wishlab has not delayed unreasonably. This motion was brought within the period
2 permitted by this Court's Scheduling And Case Management Order to allow the
3 addition of parties.

4 Moreover, no prejudice will result to Plaintiff (or any other defendant) by the
5 filing of the Third-Party Complaint. The parties are in the discovery phase of the
6 case. The Discovery Cut-Off date is not until July 26, 2013, the Motion Cut-Off
7 date not until August 19, 2013, and the trial has been set for more than a year out,
8 on October 29, 2013. Accordingly, as the parties hereto have only just commenced
9 discovery and based on these deadlines, no party will suffer prejudice by the
10 addition of Canyon Springs.

11 Finally, Wishlab has a legitimate claim of derivative liability against Canyon
12 Springs inasmuch as Canyon Springs may be obligated to fully indemnify Wishlab
13 for any sums that Wishlab may be compelled to pay as the result of any damages or
14 judgment recovered by Plaintiff against Wishlab concerning the Red Feather Mall
15 Transfers. Accordingly, the filing of Wishlab's viable Third-Party Complaint
16 against Canyon Springs will not result in undue or substantial delay of the
17 proceedings.

18 **D. No Prejudice to Canyon Springs Will Occur.**

19 For the same reasons stated in section III.C. above, Canyon Springs will not
20 be prejudiced by the impleader as discovery in this matter has only just commenced
21 and there remains plenty of time until trial and its associated cut-off dates.

22 **E. This Court Has Jurisdiction Over the Requested Third-Party**
23 **Complaint.**

24 Although 28 U.S.C. §1332(a)(1) requires that in that the amount in
25 controversy exceed \$75,000, exclusive of interest and costs, and that the action be
26 between parties incorporated in different states, case law supports the finding of
27 jurisdiction over third-party actions absent these factors. *See, e.g., Banks*, 109
28 F.R.D. at 538 (N.D. Cal. 1985) (no independent basis for federal jurisdiction is

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required if the original complaint has satisfied the federal requirements for jurisdiction); *Burke v. Ernest W. Hahn, Inc.*, 592 F.2d 542, 546 (9th Cir.1979) (approved the joining of a party within the ancillary jurisdiction of the court where that party is brought into the case by a party other than the plaintiff who seeks indemnification); *United States v. United Pac. Ins. Co.*, 472 F.2d 792, 794 (9th Cir.1973) (the third party complaint need not have an independent basis for federal jurisdiction if the original complaint has satisfied the federal requirements for jurisdiction), *cert. denied* 411 U.S. 982 (1973).

Jurisdiction is also grounded in this third-party action pursuant to 28 U.S.C. §1367(a) inasmuch as Wishlab seeks the joinder of an additional party arising from a related transaction. *See Burke v. Hahn*, 592 F.2d 542, 545 (9th Cir. 1979) (ancillary jurisdiction exists if the new claims arise out of the subject matter of the original action and involve the same persons or issues or if they arise from the same "transaction or occurrence.").

Finally, the Court has personal jurisdiction over Canyon Springs on the basis that Canyon Springs actively transacts business in this District in California, is incorporated in California, and has a principal place of business in Beverly Hills, California.

IV. CONCLUSION

Based on the foregoing, Wishlab respectfully requests the Court grant its Motion for Leave to File the requested Third-Party Complaint.

DATED: September 27, 2012

GREENBERG GLUSKER FIELDS
CLAMAN & MACHTINGER, LLP

By: /s/ Brian L. Davidoff

BRIAN L. DAVIDOFF (SBN 102654)
LORI L. WERDERITCH (SBN 247345)
Attorneys for Defendants Mousa Namvar
Magdiel, LLC, DGADE of Delaware,
LLC, Namco 8, LLC, Bunherst, LLC and
Defendant and Third-Party Plaintiff
Wishlab 90, LLC

DECLARATION OF LORI L. WERDERITCH

I, Lori L. Werderitch, declare as follows:

1. I am an attorney duly licensed to practice before this Court and all courts of the state of California and am associated with the firm of Greenberg Glusker Fields Claman & Machtinger LLP, attorneys of record for Defendants Mousa Namvar Magdiel, LLC, DGADE of Delaware, LLC, Namco 8, LLC, Bunherst, LLC and Defendant and Third-Party Plaintiff Wishlab 90, LLC ("Wishlab") herein. The facts set forth herein are of my own personal knowledge and if sworn I could and would testify competently thereto.

2. Attached hereto as **Exhibit A** are true and correct copies of the Summons and Third-Party Complaint.

3. Prior to filing this motion, I consulted telephonically with opposing counsel, pursuant to L.R. 7-3, but opposing counsel has not yet indicated whether this motion will be opposed by Plaintiff Bradley D. Sharp, Chapter 11 Trustee of Namco Capital Group, Inc. ("Plaintiff").

4. Also prior to the filing of this motion, Wishlab had sent a demand letter for indemnification to Canyon Springs. Thereafter counsel for Wishlab and Canyon Springs Shopping Center, LLC engaged in discussions regarding the indemnification now sought by the Third-Party Complaint. The parties entered into a Confidentiality Agreement and exchanged documents, but have not yet reached resolution.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 27th day of September, 2012 at Los Angeles, California.

/s/ Lori L. Werderitch
LORI L. WERDERITCH

DECLARATION OF FARAMARZ RABAN

I, Faramarz Raban, declare as follows:

1. I am the manager of Wishlab 90, LLC ("Wishlab"), Defendant and Third-Party Plaintiff herein, and am authorized to make this Declaration on Wishlab's behalf. I make this Declaration in support of Wishlab's Motion for Leave to File Its Third-Party Complaint. The facts set forth herein are of my own personal knowledge and if sworn I could and would testify competently thereto.

2. Attached hereto as **Exhibit B** is a true and correct copy of the relevant sections of the Membership Interests Purchase Agreement, dated June 29, 2007, between Canyon Springs Shopping Center, LLC, on the one hand as Seller, and Wishlab, on the other hand as Buyer, by which Canyon Springs sold 100% of its membership interest in Namco 8, LLC.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 27th day of September, 2012 at Los Angeles, California.


FARAMARZ RABAN

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Los Angeles, California 90067-4590

PROOF OF SERVICE**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am over the age of 18 and not a party to the within action; I am employed by GREENBERG GLUSKER FIELDS CLAMAN & MACHTINGER LLP in the County of Los Angeles at 1900 Avenue of the Stars, 21st Floor, Los Angeles, California 90067.

On September 28, 2012, I served the foregoing document(s) described as:
WISHLAB 90 LLC'S NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE THIRD-PARTY COMPLAINT PURSUANT TO F.R.C.P. 14; MEMORANDUM OF POINTS & AUTHORITIES; DECLARATIONS OF LORI L. WERDERITCH AND FARAMARZ RABAN IN SUPPORT THEREOF

☐ By placing the true copies thereof enclosed in sealed envelopes addressed as stated below.

☐ **(BY MAIL)** I placed said envelope(s) for collection and mailing, following ordinary business practices, at the business offices of GREENBERG GLUSKER FIELDS CLAMAN & MACHTINGER, LLP, and addressed as shown on the attached service list, for deposit in the United States Postal Service. I am readily familiar with the firm's practice for collection and processing correspondence for mailing with the United States Postal Service, and said envelope(s) will be deposited with the United States Postal Service on said date in the ordinary course of business.

☒ **(BY OVERNIGHT DELIVERY).** On September 28, 2012, I caused said document(s) to be placed in a Norco Overnite envelope and taken to the Norco Overnite Drop Box located at 1900 Avenue of the Stars, Los Angeles, California 90067 for delivery to the parties listed on the attached service list:

VIA NORCO OVERNITE

Honorable Gary A. Feess
 United States District Court
 255 East Temple Street, Courtroom 740
 Los Angeles, California 90012

☒ **(BY ELECTRONIC SERVICE)** by causing the foregoing document(s) to be electronically filed using the Court's Electronic Filing System which constitutes service of the filed document(s) on the individual(s) listed on the attached mailing list.

Alan J Kornfeld: akornfeld@pszyj.com
 Elissa Wagner: ewagner@pszyj.com
 Genise R. Reiter: grr@srblaw.com
 Alan Frank Broidy: fbroidy@ix.netcom.com
 Robert B Mobasserri: Robert@lawyer.com
 Brian Leslie Davidoff: BDavidoff@GreenbergGlusker.com;
 jreinglass@greenbergglusker.com; kwoodson@greenbergglusker.
 Lori L Werderitch LWerderitch@GreenbergGlusker.com,
 Office of the U.S. Trustee: ustpreion16.la.ecf@usdoj.gov

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1 ☒ (Federal) I declare that I am employed in the office of a member of the
2 bar of this court at whose direction the service was made. I declare under
3 penalty of perjury that the above is true and correct.

4 Executed on September 28, 2012 at Los Angeles, California.

5 /s/ Jan Reinglass
6 JAN REINGLASS

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& MACHTINGER LLP
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